IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 777 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NARESHBHAI CHANABHAI MAKWANA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 777 of 2004

MR RM PARMAR for Petitioner No. 1

MS PB SHETH AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 05/04/2004

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing

and setting aside an order dated 13/06/03, passed by respondent no.1 herein, for detaining the petitioner u/s.3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985, on the ground that the petitioner was involved in four IPC cases relating to offences punishable u/s.392, 379 read with s.114 of the IPC registered before 'B' Division Police Station, 'B' Division Police Station, Pradyumnagar Police Station and 'A' Division Police Station at C.R.No.242/2003, 393/2003, 261/2003 and 239/2003 respectively.

2. It was alleged against the petitioner that two witnesses had given statements against the petitioner. On the strength of the above four registered offences and two unregistered cases, the detaining authority had passed an order of detention against the petitioner.

3. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been mainly contended that the order of his detention is illegal and therefore, it is required to be quashed and set aside.

4. It has been contended that the petitioner could not be treated to be a "dangerous person" whose activities would lead to a threat to public order. It is further contended that the detaining authority has considered statements of two unnamed witnesses without having any material with it, and therefore, the power of privilege u/s.9(2) of the said Act could not have been claimed. That, therefore, non-disclosure of the names of witnesses would amount to a violation of the principle of natural justice. That, therefore, the order of detention is illegal and deserves to be set aside.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita S Panchal learned AGP has appeared on behalf of the respondents. I have heard the learned advocates for the parties and have perused the papers.

6. At the final hearing, the learned advocate for the petitioner has argued that there are four IPC offences registered against the petitioner as aforesaid. He also argues that this would not amount to a threat to public order. On going through the said list of offences, it can be gathered that these are stray individual I.P.C. offences of theft and robbery against individual persons. Therefore, there is no question of disturbance of public order.

7. It can be gathered that so far the first offence is concerned, the petitioner was not named. Same is the case with respect to other offences registered against the petitioner. It, therefore, cannot be said that the activities of the petitioner amounted to a threat to public order.

8. So far the statements of unnamed witnesses are concerned, indisputably, the names of the witnesses were not disclosed to the petitioner. Therefore, there was violation of the principle of natural justice in as much as the petitioner was not aware about the names of witnesses whose statements were considered by the detaining authority. It is true that the detaining authority has claimed power of privilege u/s.9(2) of the said Act. However, for claiming the said privilege, the detaining authority was required to have with it credible material in order to show that an inquiry was made by it into the genuineness and correctness of the statements made by the witnesses, in order to show that they had reasonable apprehension and fear in their minds against the petitioner. But, no such credible material appears to be on record. In absence of such materials on record, the detaining authority could not claim the power of privilege u/s.9(2) of the said Act as held by this Court (Hon'ble Mr.Justice A.L. Dave) in S.C.A.11335/2001. So, on the one hand, the registered offences did not lead to a threat to public order and on the other hand, non-disclosure of names of witnesses, has resulted in violation of the principle of natural justice. In that view of the matter, the order of detention cannot be sustained in the eye of law.

9. For the foregoing reason, this petition is allowed. The impugned order of detention dated 13/06/03 passed by respondent no.1 against the petitioner, is ordered to be quashed and set aside. Detenu, Naresh Chanabhai Makwana, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

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